

Appl. No. 10/067,187
Amdt. Dated October 31, 2003
Reply to Office Action of July 10, 2003

REMARKS

Claims 1 through 13 and 15 through 44 are pending in the present application. Claim 14 is cancelled. Claims 45 and 46 are withdrawn.

Applicants believe that all of the claims are currently in condition for allowance.

In the Office Action, claims 1 to 46 were subject to a restriction and election requirement. Applicants affirm the June 12, 2003 election, via teleconference, of the invention of Group I, that is, claims 1 through 44, drawn to a cleanser, classified in class 510, subclass 123. Applicants' election is made with traverse.

In the Office Action, claims 1 to 21, 24 to 27, 29 to 36 and 40 are rejected as being anticipated by U.S. Patent No. 5,720,961 to Fowler (hereinafter "Fowler"). Claim 14 has been cancelled. Accordingly, the rejection of claim 14 is moot.

Applicants have amended independent claim 1 to further clarify its respective features. Applicants respectfully submit that Fowler does not expressly or inherently disclose all of the elements set forth in independent claim 1 or claims 2 to 21, 24 to 27, 29 to 36 and 40, which depend directly or indirectly therefrom. Thus, Fowler does not anticipate claim 1 or claims 2 to 21, 24 to 27, 29 to 36 and 40.

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Independent claim 1 now clearly provides a cleanser composition comprising: a mild surfactant system; a moisturizer system that comprises two or more moisturizers selected from the group consisting of amidoamine salt, lactic acid salt, sunflowerseed amidopropyl dimethylamine lactate, isostearamidopropyl morpholine lactate, sodium C₁₂-C₁₅ alkoxypropyl iminodipropionate, laureth-12 sulfosuccinate, cocoglucoside, glyceryl oleate, casteryl maleate, olive oil, glycerin, and any combinations thereof; and a solvent system, wherein the mild surfactant system amounts to less than 17 wt.% of the total weight of the composition.

Fowler does not disclose a moisturizer system, let alone a moisturizer system comprising two or more moisturizers selected from the group consisting of amidoamine salt, lactic acid salt, sunflowerseed amidopropyl dimethylamine lactate, isostearamidopropyl morpholine lactate, sodium C₁₂-C₁₅ alkoxypropyl iminodipropionate, laureth-12 sulfosuccinate, cocoglucoside, glyceryl oleate, casteryl maleate, olive oil, glycerin, and any combinations thereof.

Rather, Fowler is directed to a personal care composition useful for cleansing the skin and hair using insoluble micronized cleansing particles chosen to provide a cleansing benefit, yet with out being tactilely detectable or unduly causing abrasion (column 1, lines 7 to 20). Fowler does not disclose a personal care composition useful for cleansing and moisturizing the skin. In fact, Fowler merely lists skin-conditioning agents as an optional

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component, which may be added to the claimed cleansing composition. Thus, there is no disclosure or suggestion of a moisturizing system, let alone a moisturizer system comprising two or more moisturizers selected from the group consisting of amidoamine salt, lactic acid salt, sunflowerseed amidopropyl dimethylamine lactate, isostearamidopropyl morpholine lactate, sodium C₁₂-C₁₅ alkoxypropyl iminodipropionate, laureth-12 sulfosuccinate, cocoglucoside, glyceryl oleate, casteryl maleate, olive oil, glycerin, and any combinations thereof. Independent claim 1 is thus clearly patentable over Fowler.

Since claims 2 to 21, 24 to 27, 29 to 36 and 40 depend from claim 1 and provide further features, they are also clearly patentable over Fowler for at least the reasons discussed.

In the Office Action, claims 22, 23, 38, 41 and 42 are rejected under 35 U.S.C. 102(b) as anticipated by or in the alternative, under 35 U.S.C. 103(a) as obvious, over Fowler.

Claims 22, 23, 38, 41 and 42 all depend from independent claim 1. Further, claims 22, 23, 38, 41 and 42 provide further patentable features over Fowler. For example, claim 22 provides that the composition of claim 1 has a viscosity of about 1 centipoise to about 64 centipoise. Claim 23 provides that the composition of claim 1 has a viscosity of about 10 centipoise to about 30 centipoise. Claim 38 provides that the cleansing composition has a pH of about 4 to 9. Claim 41 provides

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that the cleansing composition is delivered as a foam.

Claim 42 provides that the cleansing composition of claim 1 is a tear free composition. The features of claims 22, 23, 38, 41 and 42 recited above, Applicants submit, are not disclosed in Fowler. Thus, these claims are clearly patentable over Fowler for these reasons as well.

Claims 22, 23, 38, 41 and 42 are also rejected under 35 U.S.C. 103(a) as obvious over Fowler. Independent claim 1 and claims 22, 23, 38, 41 and 42, which depend therefrom are not rendered obvious by Fowler. To establish a *prima facie* case of obviousness there must be some suggestion or motivation to modify the reference. The present application is directed to a moisturizing cleanser. The specification of the present application provides that the choice of the moisturizer for use in the moisturizer system is predicated on a combination of the following two factors: (1) low irritation potential and (2) skin moisture level preservation (page 9, lines 15 to 19). In contrast, Fowler does not disclose a moisturizer. Rather, Fowler is directed to a personal care composition useful for cleansing the skin and hair using insoluble micronized cleansing particles chosen to provide a cleansing benefit, yet with out being tactilely detectable or unduly causing abrasion (column 1, lines 7 to 20). Thus, Fowler does not disclose a personal care composition useful for moisturizing the skin. While Fowler lists skin-conditioning agents as an optional component, which may be added to the claimed cleansing composition, Fowler does not suggest a moisturizing system comprising two or more moisturizers, as is clearly shown by the Examples 1 through 7. Accordingly,

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Fowler does not provide a suggestion or motivation to modify the personal care composition to provide a moisturizing system comprising two or more moisturizers, as is clearly claimed by claim 1.

To establish a *prima facie* case of obviousness the prior art reference must also disclose or suggest all the claim limitations. As discussed above, Fowler does not disclose as a necessary ingredient a moisturizer system, let alone a moisturizer system comprising two or more moisturizers selected from the group consisting of amidoamine salt, lactic acid salt, sunflowerseed amidopropyl dimethylamine lactate, isostearamidopropyl morpholine lactate, sodium C₁₂-C₁₅ alkoxypropyl iminodipropionate, laureth-12 sulfosuccinate, cocoglucoside, glyceryl oleate, casteryl maleate, olive oil, glycerin, and any combinations thereof. Accordingly, claim 1, and claims 22, 23, 38, 41 and 42, which depend therefrom, are patentable over Fowler.

In the Office Action, claims 28, 37, 43 and 44 are rejected under 35 U.S.C. 103(a) as unpatentable over Fowler. Applicants respectfully point out that Fowler does not disclose or suggest the features of claims 1, from which claims 28 and 37 depend, 43 or 44.

As discussed, to establish a *prima facie* case of obviousness the prior art reference must also disclose or suggest all of the claim limitations. Fowler does not disclose a moisturizer system as a necessary ingredient, let alone a moisturizer system comprising two or more

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moisturizers selected from the group consisting of amidoamine salt, lactic acid salt, sunflowerseed amidopropyl dimethylamine lactate, isostearamidopropyl morpholine lactate, sodium C₁₂-C₁₅ alkoxypropyl iminodipropionate, laureth-12 sulfosuccinate, cocoglucoside, glyceryl oleate, casteryl maleate, olive oil, glycerin, and any combinations thereof. Accordingly, claim 1, and claims 28 and 37, which depend therefrom, are patentable over Fowler.

Claim 28, which incorporates all of the limitations of claim 1, further provides that the humectant is about 1 wt.% to about 5 wt.% of the total weight of the composition. Claim 37 further provides that the pH adjuster is about 0.001 wt.% to about 1 wt.% of the total weight of the composition. Accordingly, claims 28 and 37, which depend from claim 1 and provide further distinctions thereto, are clearly patentable over Fowler. Therefore, the rejections of claims 28 and 37 under 35 U.S.C. § 103(a) should be withdrawn and claims 28 and 37 should be allowed.

Claims 43 is also not anticipated by Fowler. Claim 43 is directed to a mild, tear free cleanser composition comprising: a mild surfactant system having about 0.1 wt.% to about 5 wt.% amphoteric surfactant; and about 0.1 wt.% to about 5 wt.% anionic surfactant; about 1 wt.% to about 6 wt.% moisturizer system; about 80 wt.% to about 90 wt.% water; about 0.1 wt.% to about 1.5 wt.% preservative; about 0.1 wt.% to about 0.5 wt.% chelating agent; and about 0.5 wt.% to about 2 wt.% emulsifier, wherein the composition has a viscosity about 10 centipoise to about 30 centipoise.

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Fowler does not disclose that a moisturizer system is necessary, let alone a moisturizer system in the specific proportions provided by claim 43. Moreover, Fowler does not disclose a cleansing composition having the requisite components of claim 43 in the claimed proportions. See, for example, Examples 1 through 7 of Fowler.

Claim 44 is not anticipated by Fowler. Claim 44 is directed to a mild, tear free cleanser composition comprising: a mild surfactant system having about 0.1 wt.% to about 3 wt.% amphoteric surfactant, about 0.1 wt.% to about 2 wt.% anionic surfactant, about 1 wt.% to about 11 wt.% nonionic surfactant, about 1 wt.% to about 6 wt.% moisturizer system, about 80 wt.% to about 90 wt.% water, about 0.1 wt.% to about 1.5 wt.% preservative; about 0.1 wt.% to about 0.5 wt.% chelating agent, about 0.5 wt.% to about 2 wt.% emulsifier,; and about 0.001 wt.% to about 0.1 wt.% pH adjuster, wherein the composition has a viscosity about 10 centipoise to about 30 centipoise. Again, Fowler does not disclose that a moisturizer system is necessary, and clearly does not disclose a moisturizer system in the specific proportions provided by claim 44. Further, Fowler does not disclose a cleansing composition having the requisite components of claim 44 in the claimed proportions. See, for example, Examples 1 through 7 of Fowler. Accordingly, claims 43 and 44 are patentable over Fowler. Therefore, the rejection of claims 43 and 44 under 35 U.S.C. § 103(a) should be withdrawn and claims 43 and 44 should be allowed.

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It is respectfully requested for the reasons set forth above that the rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) be reconsidered and withdrawn, and that claims 1, 2 to 13 and 15 through 44 be allowed.

The Action provisionally rejected claims 1 to 44 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 to 48 of copending Application No. 10/097,057. In response, Applicants are submitting herewith a terminal disclaimer in compliance with 37 C.F.R. 1.321(c).

In view of the foregoing, Applicants respectfully submit that all claims presented in this application patentably distinguish over the prior art. Accordingly, Applicants respectfully request favorable consideration and that this application be passed to allowance.

Respectfully submitted,

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Date



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